IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7488 OF 2005

Shri Jayant Gajanan Pathak ... Petitioner

V/s

Shri Hemchandra Vishnu Gupte
(since deceased) & ors. ... Respondents

Mr. Mandar Limaye & S.M. Kelkar for the petitioner.

CORAM: P.V. KAKADE, J.

DATED: 21ST FEBRUARY, 2006

P.C.:

1. Heard learned counsel for the petitioner. Perused the record.

2. The petitioner has preferred this petition against the order passed by the District Judge, Pune, dismissing the appeal of the petitioner and confirming the order of dismissal of the suit passed by the Small Causes Court, Pune.

3. The plaintiff filed the suit for perpetual as well as mandatory injunction against the respondent landlord

on the ground that the petitioner was tenant in the suit property and part thereof was demolished by the respondent landlord illegaly. It was the case of the petitioner that he was tenant in the premises to the extent of 13 x 11 sq.mtrs. besides the open plot which
came to be demolished and originally toilet block was located there but the respondent had demolished the same illegaly in his absence.

4. The defendants respondents contested the suit denying the allegations. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the petitioner plaintiff had failed to prove that he was tenant in the premises admeasuring 13 x 11 sq.mtrs. on back side of the property and, as such, suit for perpetual as well as mandatory injunction came to be dismissed.

5. The appeal was preferred in the District Court. The learned Addl. District Judge concurred with the findings recorded by the Trial judge and dismissed the appeal and hence the present petition.

6. At the outset, it may be noted that the only

contention sought to be raised on behalf of the petitioner is that the solitary rent receipt which is provided is the bill of establishing extent of rented premises whichwas disbelieved by both the Courts below without appreciating its true impact.

It appears from the record that the Trial Court perused the receipt Exh.95 in which both the suit premises were mentioned and recitals to that effect found to be not eligible and it was difficult to understand exactly what is written, who and when. The plaintiff in his evidence has also failed to clarify the position and, as such, the receipt was held to be not proved. There was no other evidence on record to show the extent of premises under the tenancy.

The lower appellate Court, on perusal of the document of receipt Exh.95 came to the conclusion that it was a suspicious document. On scrutiny of the document itself it was found that certain contents were added subsequently as those were found in different ink as well as handwriting. The learned counsel for the petitioner submitted that the lower appellate Court should not have taken upon itself to make scrutiny of the document in order to hold that it is a suspicious

document. However, it is needless to mention that under the relevant provisions of the Evidence Act, the Courts are competent to scrutinize the documents suo-moto and record its findings if it is found to be either suspicious or fabricated which appears to be the case in the present dispute.

7. Be that as it may, the fact remains that both the Courts below have come to the conclusion that the petitioner has failed to prove the extent of area of tenancy and, therefore, have rightly refused to pass decree for perpetual as well as mandatory injunction. I do not see any perversity in the findings recorded by both the Courts below and, as such, I find no merits in the petition and it stands dismissed in limine. No order as to costs.

.....